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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,361	11/23/2001	Mark S. Pelak	MSP-2	5889

7590 12/20/2002

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EXAMINER

BUMGARNER, MELBA N

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/002,361	PELAK, MARK S.
Examiner	Art Unit	
Melba Bumgarner	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 23 November 2001 .

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-11 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 23 November 2001 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5. 6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character 26' has been used to designate both implant abutment attachment and implant abutment. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 40' and 36'. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The disclosure is objected to because of the following informalities: page 4, particularly paragraph 3 contains errors. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Recitations of "said axial implant abutment surface" in claim 1 line 7, "said prosthesis" in claim 1, "said axial implant abutment" in claim 7, "said tapered surfaces" in claim 8, "said retentive element" and "said mating tapered surfaces" in claim 9 lack sufficient antecedent basis. Claims 1-5 contain improper preamble. In claim 5, the limitation "either processed into a denture, partial denture, a splinted bar" is unclear. In claim 7, it is unclear what is meant by "on and upwardly and

inwardly extending". Claim 1 is objected to because of "matable" in line 10 and "said ring" in line 7 should read --said O-ring--.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Lazzara et al. (4,988,297). Lazzara et al. discloses dental prosthesis comprising an implant abutment 46 (variations shown 47) affixed at a lower end to a dental implant 10, abutment having an implant abutment axis; a groove 116 in the abutment extending substantially transverse to the axis and O-ring 118, O-ring shown having a cross-sectional diameter substantially greater than the depth of the groove such that outer portion of the O-ring projects from abutment surface; and an appliance 114 having a retainer cavity including a retainer surface matching abutment surface, a complementary groove in retainer surface shaped to closely match and receive outer portion as seen in figure 9 (column 5 line 63). The O-ring is inherently made of elastomeric material stretched about the abutment and elastically retained in the groove. As to claim 2, the abutment includes a tapered surface. As to claim 3, the abutment is threadedly connected to the implant (figure 1). As to claim 4, the abutment is formed from metal (column 4 line 6). As to claim 5, the appliance is a full or partial denture (column 6 line 1).

7. Claims 7 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Grande et al. (6,068,478). Grande et al. disclose an implant dental prosthesis comprising an implant abutment 21 affixed at a lower end to a dental implant 1; abutment having an implant abutment axis, and an appliance 3 having a hollow retainer cavity 32 with an outwardly and downwardly taper relative to the axis forming a retainer surface mating on tapered surface on the abutment as seen in figures 1B and 1C (column 4 line 31). Patentable weight is not given to the term "prosthesis" in the preamble. As to claim 8, the appliance and abutment are in frictional engagement.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lazzara in view of Beatty et al. (5,476,383). Lazzara discloses a dental prosthesis that shows the limitations as described above; however, Lazzara does not show the appliance formed from porcelain fused to metal. Beatty et al. teach appliance of porcelain fused to metal (column 1 line 21). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the prosthesis of Lazzara to have porcelain fused to metal appliance. One would have been motivated to make such a modification to provide appliance that closely replicate natural dentition in appearance as taught by Beatty et al.

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10. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grande et al. in view of Lazzara. Grande et al. disclose an implant dental prosthesis that shows the limitations as described above; however, they do not show retentive element between tapered surfaces. Lazzara teaches a prosthesis having a retentive element between tapered surfaces, which is in a plane generally transverse to the axis and that is an O-ring in complementary grooves in the tapered surfaces. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the prosthesis of Grande et al. to have the element of Lazzara to permit easy removal of the appliance and supporting component as taught by Lazzara.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lustig (4,575,340) is cited to show the state of the art with respect to a dental prosthesis.

12. Any inquiry concerning this communication from the examiner should be directed to Melba Bumgarner whose telephone number is 703-305-0740. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*Melba Bumgarner*  
Melba Bumgarner

*Kevin Shaver* 12/13/07  
KEVIN SHAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700